

2011 FEB 23 PM 4:02  
JEANNE HICKS, CLERK

**Stephanie Kling**

In Session respectfully urges the Court to permit live coverage of the Trial because Rule 122 allows it, a weighing of the relevant factors supports it, and live coverage advances Arizona's tradition of courtroom access. Ariz. Const. art. II, § 11

1 (“Justice in all cases shall be administered openly . . . .”); Ariz. R. Sup. Ct. 122(c)  
2 (recognizing benefits to public of camera coverage). Rule 122 does not distinguish  
3 between “live” and “taped” camera coverage. Consequently, before banning live coverage  
4 of a trial, the Court must specifically find a “likelihood of harm” posed uniquely by live  
5 coverage to one of the seven Rule 122 factors that “outweighs the benefit to the public of  
6 camera coverage.” Ariz. R. Sup. Ct. 122(c). No so such harm exists, and prohibiting live  
7 coverage of a trial of great public concern nationally, especially when that Trial will be  
8 open to the press and public generally, would not advance any important government  
9 interest. *E.g., KPNX Broadcasting Co. v. Superior Court*, 139 Ariz. 246, 252, 678 P.2d  
10 431, 437 (1984).

11 In this increasingly digital age, prohibiting “live” coverage is akin to telling  
12 the media when it can publish information – a prior restraint, which is heavily disfavored  
13 as a matter of well-settled law. *Id.*, 139 Ariz. at 251, 678 P.2d at 436. As the U.S.  
14 Supreme Court has recognized, “the element of time is not unimportant if press coverage  
15 is to fulfill its traditional function of bringing news to the public promptly.” *Nebraska*  
16 *Press Ass’n v. Stuart*, 427 U.S. 539, 561 (1976). Accordingly, absent a showing of a  
17 serious harm posed by live coverage that cannot be addressed by less-restrictive means –  
18 and that a live coverage ban would prevent the alleged harm – live coverage should be  
19 permitted. *E.g., id.*

20 This case involves an internationally-known, self-help guru who stands  
21 accused of manslaughter in connection with the deaths of three people who attended a  
22 sweat lodge ceremony in Northern Arizona. As such, the Trial – and the State’s  
23 prosecution of the Defendant – is a matter of acute public interest. *See, e.g., Godbehere v.*  
24 *Phoenix Newspapers, Inc.*, 162 Ariz. 335, 343, 783 P.2d 781, 789 (1989) (“It is difficult to  
25 conceive of an area of greater public interest than law enforcement.”). Because Defendant  
26 has followers worldwide, interest in this case stretches beyond Yavapai County, where  
27 public interest in this Trial exceeds the number of seats in the courtroom. Live coverage  
28 accommodates this interest, and would benefit participants and the public alike. *E.g.,*

1 *Petition of WMUR Channel 9*, 813 A.2d 455, 460 (N.H. 2002) (citing studies that have  
2 found that allowing cameras in the courtroom “improves public perceptions of the  
3 judiciary and its processes, improves the trial process for all participants, and educates the  
4 public about the judicial branch of government.”).

5 Accordingly, and for the reasons explained more fully below, In Session  
6 respectfully requests that the Court allow live camera coverage of the Trial.

7 Pertinent Background

8 On February 23, 2010, the Court issued a Minute Entry that outlined  
9 parameters for camera coverage that have been observed to date in this case. The Court  
10 found that there was no “likelihood of harm which outweighs the benefit of camera  
11 coverage,” and placed the following limitations on camera coverage of the proceedings:  
12 (1) camera placement in the far corner of the courtroom; (2) no photographs of Defendant  
13 in restraints; (3) consideration of witness objections; and (4) allowing use of personal  
14 audio recording devices. [Court’s Feb. 23, 2010 Minute Entry, at 2] As part of its  
15 consideration of camera coverage, the Court held an informal demonstration of media  
16 technology in the courtroom and considered issues such as microphone and camera  
17 placement.

18 On February 11, 2011, the Court referred to its 2010 Minute Entry allowing  
19 camera coverage, describing “its intent to follow its previous decision regarding media  
20 equipment and sound arrangements that are reasonable, that are not intrusive or will  
21 invade confidentiality.” [Court’s Feb. 11, 2011 Minute Entry, at 3] The Court, however,  
22 raised questions about allowing live camera coverage of the Trial, writing: “The Court  
23 advises it is not inclined to permit live coverage.” [*Id.*] On February 15, 2011, In Session  
24 Correspondent Beth Karas wrote the Court and requested an opportunity to be heard on  
25 the concerns expressed by the Court about live coverage. [See Ex. A]

26 In Session, formerly known as CourtTV, provides live coverage of trials and  
27 legal news with an eye toward taking viewers into the courtroom and better educating  
28 them about the court system. In Session has broadcast at least four Arizona trials “live”

1 since 1991, and has broadcast numerous high-profile trials nationally without disruption or  
2 harm to court decorum. Several years ago, the U.S. Department of Justice sought In  
3 Session's guidance in its broadcast of the trial of deposed Iraqi President Saddam Hussein.  
4 Hussein's trial was broadcast live by the same technical crew that would assist in the live  
5 coverage of this Trial.

6 On February 17, 2011, the Court set oral argument and an evidentiary  
7 hearing regarding "the entire media coverage issue with respect to the trial in this matter."  
8 [See Ex. B] In a separate Minute Entry, the Court confirmed "the ruling is live video  
9 cameras will be allowed in the Courtroom during Trial, and is governed under Rule 122."  
10 [Court's Feb. 17, 2011 Minute Entry] This Request reflects In Session's efforts to secure  
11 an Order permitting live coverage of the Trial, and In Session requests an opportunity to  
12 be heard on the Request at the February 25 hearing. If the Request is granted, In Session  
13 will work with KPNX Broadcasting Co. ("KPNX") to provide pool camera coverage of  
14 the Trial.

#### 15 Argument

#### 16 I. RULE 122 CREATES A PRESUMPTION IN FAVOR OF CAMERA 17 COVERAGE, AND PROVIDES NO BASIS TO LIMIT LIVE COVERAGE OF A 18 CRIMINAL TRIAL.

19 As the Court noted, Rule 122 "reads as if there is a presumption that there  
20 are cameras present, unless specific findings are made." [Court's Feb. 11, 2011 Minute  
21 Entry] Under Rule 122, courts may limit or prohibit camera coverage of courtroom  
22 proceedings "only after making specific, on-the-record findings that there is a *likelihood*  
23 *of harm* arising from one or more" of seven factors identified in the Rule "*that outweighs*  
24 *the benefit to the public* of camera coverage." Ariz. R. Sup. Ct. 122(c) (emphasis added).  
25 Rule 122 does not distinguish between "live" and "taped" camera coverage, and expresses  
26 no preference for the latter. Consequently, before prohibiting live coverage, the Court  
27 must find a likelihood of harm caused by live coverage that outweighs the benefits to the  
28 public of the practice. Ariz. R. Sup. Ct. 122(c).

1           The Rule provides that the trial court should give due consideration to the  
2 following factors:

- 3           (i) The impact of coverage upon the right of any party to a fair trial;
- 4           (ii) The impact of coverage upon the right of privacy of any party or  
5 witness;
- 6           (iii) The impact of coverage upon the safety and well-being of any  
7 party, witness or juror;
- 8           (iv) The likelihood that coverage would distract participants or would  
9 detract from the dignity of the proceedings;
- 10          (v) The adequacy of the physical facilities of the court for coverage;
- 11          (vi) The timeliness of the request pursuant to subsection (f) of this  
12 Rule; and
- 13          (vii) Any other factor affecting the fair administration of justice.

14           Ariz. Sup. Ct. R. 122(b). Because there is no “likelihood of harm” posed by  
15 live coverage to any of the Rule 122 factors, the Court should permit live coverage of the  
16 Trial.

17           A.     Live Coverage Poses No Risk to Fair Trial Rights.

18           As the State acknowledged in its February 19, 2010 Objection to Cameras in  
19 the Courtroom, this factor “carries less weight once a jury is empanelled and a trial has  
20 commenced.” [State’s Feb. 19, 2010 Objection, at 3-4] Jury selection is already almost  
21 complete, and a jury would be seated by the time live coverage begins. In fact, live  
22 coverage may pose *fewer* risks than tape-delayed coverage because jurors would not see  
23 any of the contemporaneous coverage of the trial. Moreover, it is difficult to conceive of  
24 any risks uniquely posed by live – as opposed to tape-delayed – coverage of the Trial. To  
25 the extent that the parties are concerned about witnesses watching testimony of other  
26 witnesses in the case, it merits note that these issues are not unique to live coverage. In  
27 any event, the Court can admonish witnesses to avoid watching or reading coverage of the  
28 Trial as an alternative to prohibiting live coverage. In fact, Ariz. R. Crim. P. 9.3(c) creates

1 a presumption of media access to a proceeding even where others are shut out, allowing a  
2 court to exclude “all spectators *except representatives of the press*” whenever necessary to  
3 prevent “embarrassment or emotional disturbance” of a witness. (emphasis added).

4 Video coverage does not harm the fairness of court proceedings. Over 25  
5 years ago, the U.S. Supreme Court invalidated a ban on broadcast coverage of trials based  
6 on mere speculation that reports of trial events “may impair the ability of jurors to decide .  
7 . . uninfluenced by extraneous matter.” *Chandler v. Florida*, 449 U.S. 560, 574-75  
8 (1981). Similarly, courts have repeatedly rejected the notion that the mere presence of a  
9 camera in the courtroom harms fair-trial rights. *Id.*, 449 U.S. at 578-79 (“[A]t present no  
10 one has been able to present empirical data sufficient to establish that the mere presence of  
11 the broadcast media inherently has an adverse effect on [the judicial process].”); *Stephens*  
12 *v. Mississippi*, 911 So. 2d 424, 433 (Miss. 2005) (holding placement of national network’s  
13 television camera in courtroom did not impact defendant’s fair-trial rights).

14 Moreover, there are far more people interested in this case than can attend  
15 the Trial. Indeed, the courtroom has been full at times during some of the pre-trial  
16 hearings. Allowing live coverage of the Trial encourages openness and permits the public  
17 to monitor these criminal proceedings – an issue of utmost public concern. *See Press-*  
18 *Enterprise Co. v. Superior Court*, 464 U.S. 501, 508 (1984) (“*Press-Enterprise I*”)  
19 (Openness in criminal proceedings “enhances both the basic fairness of the criminal  
20 [proceeding] and the appearance of fairness so essential to public confidence in the  
21 system.”); Ariz. Sup. Ct. Admin. Order 95-35 at 1. Video coverage – and especially  
22 gavel-to-gavel coverage of live proceedings – is the most direct and accurate tool available  
23 to convey unfiltered information about the judicial system to the public. In contrast,  
24 prohibiting cameras in the courtroom impedes public access to criminal proceedings. *See*  
25 *In re WLBT, Inc.*, 905 So. 2d 1196, 1199 (Miss. 2005) (“[P]rohibiting cameras does  
26 restrict the ability of the public to access the proceedings . . . and should be resorted to  
27 only after less restrictive measures have been considered and found to be inadequate.”).  
28 Simply put, unless the parties can specifically demonstrate a “likelihood of harm” to fair

1 trial rights posed uniquely by live coverage, the Court should permit live camera coverage  
2 of the Trial. *E.g.*, *WMUR*, 813 A.2d at 460 (holding that camera coverage does not  
3 negatively impact defendant's fair-trial rights).

4 B. Live Coverage Would Not Distract Participants or Detract from the Dignity  
5 of the Proceedings.

6 The presence of one video camera in the courtroom has not distracted  
7 participants to date, and live coverage poses no additional risk to the Trial. *E.g.*, *WMUR*,  
8 813 A.2d at 460 ("Numerous states have conducted studies on the physical effects  
9 cameras and electronic media have on courtrooms, finding minimal, if any, physical  
10 disturbance to the process."). In Session uses state-of-the-art technology, and its cameras  
11 are small, silent, and do not require power cords or additional lights. In Session has  
12 provided live coverage of hundreds of courtroom hearings – including high-profile jury  
13 trials – without distracting participants or disrupting proceedings. Consequently, live  
14 coverage will not disrupt the proceedings or distract participants.

15 C. No Other Rule 122 Factor Merits a Prohibition of Live Coverage.

16 There is no likelihood of harm to any of the remaining Rule 122 factors  
17 capable of overcoming the public interest in live camera coverage. First, there is no  
18 privacy interest at stake that justifies prohibiting live coverage of the Trial. Any witness  
19 privacy concerns, as the court noted in its initial camera coverage Order, can be addressed  
20 on a witness-by-witness basis. [Court's Feb. 23, 2010 Minute Entry] *Ariz. R. Sup. Ct.*  
21 122(b)(ii). If a witness demonstrates a legitimate privacy interest, the Court can order In  
22 Session to obscure the witness's identity digitally or prohibit coverage of the witness's  
23 testimony. *Cf. Press-Enterprise Co. v. Superior Court*, 478 U.S. 1, 14 (1986) ("*Press-*  
24 *Enterprise II*") (encouraging consideration of reasonable alternatives to complete closure  
25 of hearings). In the event any overriding privacy interest arises during any proceeding, the  
26 Court has discretion under Rule 122 to close that portion of the hearing to cameras. *Ariz.*  
27 *Sup. Ct. R. 122(c, g)*. In Session will faithfully observe all restrictions on camera  
28 coverage.

1 Second, there has been no showing that the safety or well-being of anyone  
2 involved in the proceedings would be affected by camera coverage, live or taped. To the  
3 extent these issues arise, they can be addressed individually. Third, as the State conceded  
4 in its February 19, 2010 Objection to Cameras in the Courtroom, “the facilities are  
5 adequate.” [State’s Feb. 19, 2010 Objection, at 5] Indeed, In Session will work with  
6 KPNX to ensure all technical and logistical matters are in place before the trial begins.  
7 Finally, In Session is aware of no other matter affecting the fair administration of justice  
8 posed by live camera coverage. Ariz. R. Sup. Ct. 122(b)(vii).

9 II. PROHIBITING LIVE COVERAGE OF THE TRIAL IS TANTAMOUNT TO AN  
10 UNCONSTITUTIONAL PRIOR RESTRAINT.

11 Without findings linking a likelihood of harm to one or more of the seven  
12 Rule 122 factors caused by live television coverage, a prohibition on live coverage acts as  
13 a prior restraint by unfairly limiting *when* journalists can broadcast news to the public.  
14 *See, e.g., Stuart*, 427 U.S. at 561; *KPNX*, 139 Ariz. 246, 678 P.2d 431 (invalidating sketch  
15 order as unconstitutional prior restraint). As a matter of well-settled law, “any order  
16 prohibiting the publication of information [is subjected] to a heavy presumption against its  
17 constitutional validity.” *KPNX*, 139 Ariz. at 251, 678 P.2d at 436, *quoting Organization*  
18 *for a Better Austin v. Keefe*, 402 U.S. 415, 419 (1971). Protection against prior restraint  
19 “should have particular force as applied to the reporting of criminal proceedings . . . .”  
20 *Stuart*, 427 U.S. at 559. In evaluating such an order, courts examine (1) the gravity of  
21 harm posed by the media coverage; (2) whether other measures short of a prior restraint  
22 would adequately protect fair-trial rights; and (3) the effectiveness of the prior restraint.  
23 *KPNX*, 139 Ariz. at 251, 678 P.2d at 436.

24 Restricting live coverage here fails to satisfy each element of the test. First,  
25 there is no likelihood harm posed by live coverage of the Trial. Indeed, live coverage  
26 poses no greater risk than taped coverage, which the Court has permitted throughout the  
27 proceedings to date with no negative effects. Second, the Court can use less-restrictive  
28 alternatives, such as admonishing witnesses not to watch or read coverage of the trial.



1 Third, prohibiting live coverage would not be effective: the Trial will be open to the  
2 public and press, which will be free to publish roughly contemporaneous accounts of the  
3 proceedings. Given that many witnesses have testified already in open court during  
4 preliminary hearings, a live coverage ban would serve no purpose. *KPNX*, 139 Ariz. at  
5 252, 678 P.2d at 437; *cf. Craig v. Harney*, 331 U.S. 367, 374 (1947) (“What transpires in  
6 the court room is public property.”). Consequently, prohibiting live coverage serves no  
7 higher government interest, and it is difficult to see even a rational basis for prohibiting  
8 live coverage of an open proceeding.

### 9 III. THE PUBLIC WOULD BENEFIT FROM CAMERA COVERAGE OF THE 10 TRIAL.

11 When the Arizona Supreme Court revised Rule 122 in 2008, it required  
12 courts to balance “the benefit to the public of camera coverage.” Ariz. R. Sup. Ct. 122(c).  
13 Two years earlier, the Court also recognized the unique role cameras play in informing the  
14 public about the justice system in a homicide case. In waiving the one-camera limit on  
15 television cameras at a Tucson murder trial in which a well-known doctor was accused of  
16 conspiring to murder his former associate, the Court observed: “It is in the public interest  
17 that people understand as fully as possible the operation of the justice system, and the  
18 courts in particular.” Ariz. Sup. Ct. Admin. Order No. 2006-9 (approving expanded  
19 camera coverage by national network). [See Ex. C] Live, gavel-to-gavel coverage of  
20 court proceedings offers the public the most direct way to observe the judicial system. As  
21 both logic and experience have shown, allowing camera coverage enhances the public’s  
22 ability to monitor criminal proceedings and obtain important information about the courts.  
23 *See WMUR*, 813 A.2d at 460.<sup>1</sup>

24 Significantly, the Defendant in this case is a well-known public figure. The  
25 public interest is heightened because the Defendant is accused of failing to prevent the  
26 deaths of three people who participated in a healing ceremony he led. As a matter of law,

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27 <sup>1</sup> Indeed, the Arizona Supreme Court streams “live” coverage of its proceedings to  
28 the public. [See <http://azcourts.gov/AZSupremeCourt/LiveArchivedVideo.aspx>]

1 the public has an acute interest in monitoring such judicial proceedings. *E.g.*, Ariz. Sup.  
2 Ct. Admin. Order 95-35 at 1 (“This Court has long been cognizant of the value of an  
3 informed public as a restraint upon government, and upon the value of the press as a vital  
4 source of public information.”); *Phoenix Newspapers, Inc. v. Superior Court*, 101 Ariz.  
5 257, 259, 418 P.2d 594, 596 (1966) (“[C]ourts are public institutions. The manner in  
6 which justice is administered does not have any private aspects.”).

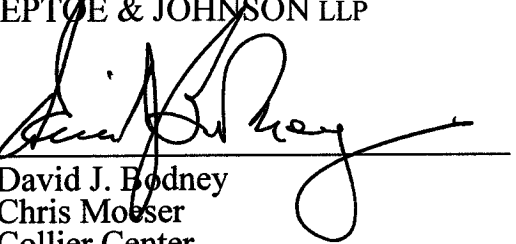
7 At bottom, allowing camera coverage of the Trial is consistent with  
8 Arizona’s long commitment to open court proceedings and the well-established principle  
9 that “[p]ublic scrutiny of a criminal trial enhances the quality and safeguards the integrity  
10 of the factfinding process, with benefits to both the defendant and society as a whole.”  
11 *Globe Newspaper Co. v. Superior Court*, 457 U.S. 596, 606 (1982). Accordingly, In  
12 Session should be permitted to provide a live broadcast feed of the Trial, consistent with  
13 the requirements of Ariz. R. Sup. Ct. 122.

14 Conclusion

15 For the foregoing reasons, this Request for Live Camera Coverage should be  
16 granted.

17 RESPECTFULLY SUBMITTED this 23<sup>rd</sup> day of February, 2011.

18 STEPTOE & JOHNSON LLP

19  
20 By   
21 David J. Bodney  
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27 Attorneys for TruTV and In Session  
28

1 ORIGINAL of the foregoing filed  
2 with the Clerk of the Court this  
3 23<sup>rd</sup> day of February, 2010, and

4 COPY of the foregoing hand-delivered  
5 this same day to:

6 Hon. Warren R. Darrow  
7 Yavapai County Superior Court – Division B  
8 Verde Valley justice Facility  
9 3505 W. Highway 260  
10 Camp Verde, AZ 86322

11 COPY of the foregoing served via  
12 facsimile and US Postal Service  
13 this same day to:

14 Sheila Sullivan Polk  
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1 CNN Center  
Atlanta, GA 30303

February 15, 2011

Via Fax Transmission

The Hon. Warren R. Darrow  
Verde Valley Judicial District  
2840 North Commonwealth Drive  
Camp Verde, AZ 86322

Re: Arizona v. James Arthur Ray

Dear Judge Darrow:

I am writing on behalf of *In Session*, formerly known as *Court TV*. I am a correspondent with *In Session* and will be leading our team coverage of *Arizona v. James Arthur Ray*. My previous experience includes eight years as a prosecutor with the Manhattan District Attorney's Office. We have recently been made aware of concerns the Court may have regarding televised coverage of *Arizona v. James Arthur Ray*. These concerns were raised at a hearing last Friday.

Because *In Session* and other media representatives were not present at that hearing, *In Session* requests an opportunity to address the Court's and the parties' concerns before any rulings are made.

Thank you for your consideration.

Sincerely,

Beth Karas, Esq.  
Correspondent

cc: Sheila Sullivan Polk, Yavapai County Attorney  
Bill Hughes, Esq., Deputy Yavapai County Attorney  
Steven Sisneros, Esq., Deputy Yavapai County Attorney  
Luis Li, Esq.  
Thomas K. Kelly, Esq.

FILED

O'Clock

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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA  
IN AND FOR THE COUNTY OF YAVAPAI

FEB 17 2011

JEANNE HICKS, Clerk

BY: [Signature]  
Clerk

DIVISION PRO TEM B

HON. WARREN R. DARROW

By: Diane Troxell, Judicial Assistant

CASE NUMBER: V1300CR201080049

Date: February 17, 2011

TITLE:

COUNSEL:

STATE OF ARIZONA

Sheila Sullivan Polk  
Yavapai County Attorney  
Bill Hughes, Esq.  
Steven Sisneros, Esq.  
Deputy Yavapai County Attorneys

(Plaintiff)

(For Plaintiff)

vs.

JAMES ARTHUR RAY

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Los Angeles, CA 90071

(Defendant)

(For Defendant)

**NOTICE OF HEARING**

The Court hereby provides notice that it will conduct oral argument and evidentiary hearing regarding the entire media coverage issue with respect to the trial in this matter. The Court will also address any technical issues at that hearing. The hearing will be held on February 25, 2011, at 1:30 p.m. in Division Pro Tem B.

cc: Victim Services Division  
Beth Karas, Attorney at Law, In Session, One CNN Center, Atlanta, GA 30303  
Chris Moeser, Esq./David Bodney, Esq., Steptoe & Johnson, Counsel for KPNX  
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Phoenix, AZ 85012-2788

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**Administrative Order**  
**No. 2006 - 9**

**RUTH V. MCGREGOR**  
Chief Justice